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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,523	11/02/2001	Mark Freier	3401-125	4169
7590	07/13/2006		EXAMINER	
Thomas C. Pontani, Esq. Cohen, Pontani, Lieberman & Pavane Suite 1210 551 Fifth Avenue New York, NY 10176			THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	
DATE MAILED: 07/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/002,523	FREIER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Thaler	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 May 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 8 and 10-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 8 and 10-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

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Claims 8 and 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salerno (4,953,559) in view of Falk et al. (4,569,131). Salerno discloses hollow shank 1, scoop 2 which defines a spoon-shaped trough having an opening (at the top of the trough) and a closed end (at the left or bottom of the trough) handling means (at the proximal end of shank 1) having an actuation mechanism 28, actuating rod 15 and covering (the combination of parts 4, 5 and 12 which are secured together) comprising a tongue (member 4, 5, 12 is a "tongue" since it is flat, planar, wide and long such that its shape is similar to the human body part of a tongue along most of its length, i.e., along portions 5 and 12), said tongue being slidably adjustable so that said tongue slides along a longitudinal length of said tongue (Tongue 4, 5, 12 slides within hollow shank 1 as it pivots since the exterior surface of portion 12 slidably engages the inner sides of notch 7 of shank 1. Further, the tongue slides "along a longitudinal length of said tongue" since it slides along the longitudinal length of portion 12 of the tongue. In other words, the sliding action occurs in portion 12 which extends along the longitudinal length of the tongue. The Merriam-Webster Online Dictionary defines "along" as "at a point or points on <a house along the river>". The sliding action of the tongue 4, 15, 12 extends at points on

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portion 12 of the tongue.) between a closure position and an open position (as it pivots), the position of the tongue being maintained without external force on the actuating rod. Salerno fails to disclose the actuating rod being releasably connectable with actuation mechanism. However, Falk et al. teach that the actuation rod 8 of a surgical instrument should be detachable from the actuation mechanism 3 apparently in order to obtain the advantage of enabling the parts to be detached to better sterilize them or to replace them when a part becomes defective. It would have been obvious to make the connection between the actuating rod and the actuation mechanism of the Salerno instrument releasable so that it too would have these advantages. As to claims 11 and 18, Salerno discloses a holding-down device (the pivot pin 9 upon which the covering 4, 5, 12 pivots) which holds the covering 4, 5, 12 onto the rest of the instrument and which guides the covering and holds it closed since it holds the covering in position. As to claim 12, the edge is at an angle relative to a longitudinal axis of the hollow shank 2 such that a retrograde inclination is exhibited by the edge of the scoop when the flexible catheter 1 is bent in the body or in the embodiment described in col. 4, lines 26-31. As to claim 13, the covering 4, 5, 12 is inherently bendable so some extent since it is thin. As to claims 15 and 16, the

volume defined by the scoop is separated from a volume defined by the hollow shank. As to claim 17, covering 4, 5, 12 comprises a thin strip. It is, in fact, axially displaced as it pivots since it moves to the left as it pivots closed. Further, it is displaced "along the longitudinal length thereof" since the entire longitudinal length of the covering is displaced as it pivots. As to claim 19, Salerno discloses sleeve 27, external ring 28, inner ring (the eyelet referred to in col. 4, line 11) and fastening bar 31.

Applicant's arguments filed May 5, 2006 have been fully considered but they are not persuasive. The meaning of "along" is broad enough to include the movement of the Salerno tongue as described above. As to claim 17, the Salerno tongue moves "across the opening" as claimed since in one position (the closed position) it extends completely across the opening while in another position (the open position) it is not completely across the opening because the left edge of the tongue is spaced slightly to the right of the left edge of the opening due to the axial component of the pivotal movement of the tongue and since the tongue is spaced above the opening.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

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mht  
7/10/06



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731